

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3
4 UNITED STATES OF AMERICA,) MAGISTRATE NO. 22-00490RT
5 Plaintiff,) Honolulu, Hawaii
6 vs.) April 19, 2022
7 (1) LINDSEY KINNEY,) DETENTION HEARING
8 Defendant.)
 _____)

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10 TRANSCRIPT OF PROCEEDINGS
11 BEFORE THE HONORABLE ROM TRADER
12 UNITED STATES MAGISTRATE JUDGE

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1 TUESDAY, APRIL 19, 2022 10:30 A.M.

2 THE COURTROOM MANAGER: Magistrate Judge Number
3 22-00490 RT, United States of America versus defendant one,
4 Lindsey Kinney.

5 This case has been called for a detention hearing.
6 Counsel, please make your appearances for the record.

7 MR. NOLAN: Good morning, Your Honor. Craig Nolan for
8 the government. To my right is Special Agent Wyatt Tackett of
9 the FBI. Behind us is Erin Patrick of Pretrial Services.

10 THE COURT: All right. Good morning.

11 MR. IGNACIO: And good morning, Your Honor. Benjamin
12 Ignacio on behalf of defendant Lindsey Kinney, who is present
13 standing to my left. We're ready to proceed.

14 THE COURT: All right. Very good. All right. At the
15 outset we do have some folks in the gallery. This is a public
16 proceeding. Public has every right to attend and the goings on
17 in court. I'm glad to have you here. But I will just simply
18 remind everyone that that right to attend public proceedings is
19 not absolute. It's contingent upon whether or not people are
20 going to comport themselves, in other words, behave
21 consistently with the decorum that's expected in court. Okay?
22 And so as long as everybody does that, absolutely no problem,
23 you're welcome to be here. Thank you for coming.

24 If you choose not to, I'm just going to let you know
25 I'm not going to tolerate anything and I will ask those people

1 that are choosing to disrupt proceedings or -- or essentially
2 interrupt or anything like that, I will ask that they be
3 removed. Okay? And so everyone's on notice. Okay? All
4 right. Very good.

5 With that, I've been handed the -- a financial
6 affidavit, Mr. Ignacio. It doesn't appear to bear the
7 signature of Mr. Kinney. Is Mr. Kinney willing to sign this?

8 MR. IGNACIO: Your Honor, I met with Mr. Kinney prior
9 to coming to the hearing today to go over that financial
10 affidavit. I corroborated the contents of that affidavit with
11 the contents of the pretrial bail report and my client. So I
12 believe that those contents are correct.

13 THE COURT: Okay.

14 MR. IGNACIO: I did ask Mr. Kinney to sign it and he
15 declined.

16 THE COURT: All right. Mr. Kinney, what I'm asking --
17 if you could stand, sir. I'm holding a financial affidavit.
18 It's a piece of paper that Mr. Ignacio, your attorney, just
19 spoke of. And part of what I need to do today is to -- to
20 essentially verify the information so that we can address the
21 matter of representation. Okay? And so what I'm going to ask
22 you is, are -- I'm going to ask the clerk to just swear you in
23 just to say whether or not the information that's on here that
24 Mr. Ignacio covered with you, if that's accurate and correct.
25 You understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. All right. And so with that, I'm
3 going to ask that you be sworn. You can just -- just raise
4 your hand to the extent you're able to, okay, Mr. Kinney?
5 Thank you, sir.

6 THE COURTROOM MANAGER: All right. Mr. Kinney, do you
7 solemnly swear that the information provided on your financial
8 affidavit is true to the best of your knowledge, so help you
9 God?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. Thank you. All right. And so
12 with that, notwithstanding the fact that Mr. Kinney has not
13 signed this particular financial affidavit, I'll accept the
14 representations of Mr. Ignacio, CJA counsel, and that the sworn
15 statement by Mr. Kinney under oath. Okay. Thank you, sir.

16 With that, we'll have this financial affidavit entered
17 and made part of the record and at this point, Mr. Ignacio, you
18 are no longer provisionally appointed, you're appointed for all
19 purposes.

20 With that, we're here for a detention proceeding. The
21 Court will take judicial notice of the records and files in
22 this case. I am in receipt of the government's motion to
23 detain. I'll note that the government is not relying upon a
24 presumption; is that correct, Mr. Nolan?

25 MR. NOLAN: That's correct. There's no presumption

1 available to us.

2 THE COURT: I just wanted to make sure. Okay. And
3 then with that, I've also been provided the Pretrial Services
4 report, which I presume that both sides have received.

5 And with that, Mr. Ignacio, how does Mr. Kinney wish
6 to proceed with regard to the issue of detention this morning?

7 MR. IGNACIO: Thank you, Your Honor. Before we get to
8 the issue of detention, I've spoken with my client. I agreed
9 to do this one time for him because I want him to feel like he
10 is part of the process.

11 THE COURT: Certainly.

12 MR. IGNACIO: But I -- I caveat what I'm about to
13 state, that I didn't do any legal research on this issue, I --
14 I don't adopt it, but I did want to give him a voice.

15 THE COURT: Sure.

16 MR. IGNACIO: And so Mr. Kinney has asked me to state
17 to the Court that he is a national sovereign repatriated -- a
18 national sovereign who is repatriated under the United States
19 of America and he is not part of the State of Hawaii or the
20 United States --

21 THE DEFENDANT: Um --

22 MR. IGNACIO: -- of America.

23 THE DEFENDANT: In this country, not --

24 MR. IGNACIO: I see.

25 THE COURT: Okay.

1 MR. IGNACIO: Okay.

2 THE COURT: All right.

3 MR. IGNACIO: I apologize. I paraphrased.

4 THE COURT: No, no, that's okay. All right. Anything
5 else on that point, Mr. Ignacio?

6 MR. IGNACIO: I think he also, by saying so, is
7 objecting to the authority of this Court to exercise --

8 THE COURT: Understood.

9 MR. IGNACIO: -- jurisdiction over him.

10 THE COURT: Let me just ask a quick question of you,
11 Mr. Ignacio. So Mr. Kinney is contesting the jurisdiction of
12 this Court at this point; is that right?

13 MR. IGNACIO: Essentially. I didn't talk to him about
14 it --

15 THE COURT: Okay.

16 MR. IGNACIO: -- that way, but I've seen these
17 arguments before.

18 THE COURT: Right. And -- and so what -- what I'm
19 asking is that based upon when you say repatriated, I'm just
20 trying to understand 'cause -- whether or not I got this
21 correct or not, is it because of his either membership or
22 association or him identifying with, for example, the Kingdom
23 of Hawaii or anything like that?

24 MR. IGNACIO: Honestly, Your Honor, I didn't go that
25 much further into --

1 THE COURT: Okay.

2 MR. IGNACIO: -- the basis of it, but it's essentially
3 my -- a sovereignty type of argument that I'm familiar with.

4 THE COURT: Understood.

5 THE DEFENDANT: Not sovereign, it's -- it's a --

6 THE COURT: Okay. Mr. Kinney, I'm just going to ask
7 you to speak to Mr. Ignacio.

8 THE DEFENDANT: Oh, sorry, sorry. I'm sorry.

9 THE COURT: Just real briefly on that point because I
10 just want to make sure that I understand that point, if that's
11 correct.

12 THE DEFENDANT: Am a national sovereign.

13 MR. IGNACIO: Okay.

14 THE DEFENDANT: Repatriated into this country, not
15 into the fake state, not into the government, into this
16 country.

17 MR. IGNACIO: So he's clarified by reiterating what I
18 just said.

19 THE COURT: Okay. All right. Very good.

20 MR. IGNACIO: Which is essentially that he's a
21 national sovereign.

22 THE COURT: All right. And with that, Mr. Nolan, is
23 there anything you would like to say? Otherwise the Court's
24 prepared to proceed.

25 MR. NOLAN: In terms of my detention argument or just

1 simply in response to that?

2 THE COURT: Well, in response to that before we get to
3 the detention.

4 MR. NOLAN: All I will say is, I understand the
5 position to mean he believes that he is not subject to laws or
6 authority of this Court. If -- if he were saying that he was
7 simply just not a member of this -- resident of this country, a
8 citizen of this country, still, as any foreign citizen comes
9 into the country, they are subject to this Court and the law
10 for the period they are here because it has jurisdiction. So I
11 interpret it to be a broader statement that this Court and the
12 federal government has no authority here where we are
13 physically in these islands.

14 THE COURT: All right. With that, the Court
15 appreciates the statements for the record made by Mr. Ignacio,
16 responded to by the government, Mr. Nolan, and then to the
17 extent that Mr. Kinney's voice is audibly recorded on the
18 proceeding for today, that he believes in essence that he's not
19 subject to the laws of, I guess the federal government or the
20 jurisdiction of this Court in short.

21 With that, certainly that can be further addressed
22 down the line if Mr. Kinney wishes to do so, but at this point
23 this Court, pursuant to 18 U.S.C. 3231, the district courts of
24 the United States shall have original jurisdiction, exclusive
25 of the courts of the states, of all offenses against the laws

1 of the United States.

2 The complaint that's on file in this particular case
3 alleges a number of things, including conduct that's alleged to
4 have occurred within the State of Hawaii, but in particular the
5 District of Hawaii. And that absent some other showing by the
6 defense at this stage as to why Mr. Kinney is not expressly
7 bound by and subject to federal law, why this Court otherwise
8 would not have proper jurisdiction, the Court will rule that at
9 this point it considers it does, with all due respect to
10 Mr. Kinney, and will proceed further to the detention matter.

11 All right. And so the record is preserved,
12 Mr. Kinney, as to that point. You're not giving up anything.
13 To the extent that a matter such as this might be better raised
14 in the context of a fully briefed motion or what have you,
15 speak to Mr. Ignacio about that further and if that's something
16 you wish to pursue later, you're welcome to do that. But for
17 purposes of today, I'm not going to recognize that argument.
18 Okay?

19 With that, as to detention, Mr. Ignacio, how does
20 Mr. Kinney wish to proceed as to that matter in light of the
21 recommendation and the government's motion?

22 MR. IGNACIO: Your Honor, we would ask that Your Honor
23 release him on -- on reasonable bail. We would object to the
24 government's motion to detain. We would also object to the
25 pretrial bail report's recommendation that he be detained

1 without bail.

2 The boxes the government checked off on its motion to
3 detain without bail notwithstanding, Mr. Kinney is clearly a
4 nonviolent man. He's never -- there's no factual assertion
5 that he's engaged in violent behavior. At worst, he's accused
6 of -- of making verbal threats. So this is a crime of words,
7 not a crime of action. He has a clean record. No criminal
8 conduct in the past.

9 THE COURT: As to his proposed plan of release, I take
10 it from what I've reviewed and what was provided by Pretrial,
11 it's his intention simply return to where he resided previously
12 and -- is that correct?

13 MR. IGNACIO: I believe so, Your Honor. Let me just
14 clarify. My understanding of -- of Mr. Kinney's existence is
15 not -- it's nontraditional at this point. He lives in a
16 community in Kaneohe. He's -- some members of society would
17 consider it homeless. I think that that might be a bit
18 incorrect.

19 He lives in a community. He knows where he -- he's
20 part of a -- a fixed area, a location that is the opposite side
21 of the island of the -- the -- where these allegations are
22 allegedly -- alleged to unfold, if they were to have unfolded.
23 The victims in this case are in Waianae. We all know that
24 Waianae is pretty much the opposite side of the island from
25 Kaneohe. There's no other allegation of -- or suggestion of

1 violent conduct.

2 As a matter of fact, it's in the pretrial bail report,
3 so I'll address it. Mr. Kinney was approached to kill somebody
4 for money and he declined and he was -- he suffered reprisals
5 as a result of it. So, I -- I think Mr. -- Mr. Kinney is a
6 peaceful man. This is a crime of words, not of deeds. And
7 this is not a presumption case. So for those reasons, Your
8 Honor, I would ask that Mr. Kinney be released.

9 THE COURT: All right. Thank you very much.

10 Mr. Nolan, government's response?

11 MR. NOLAN: Yes, Your Honor. I'll note this is
12 eligible for detention on -- on a number of theories. And I've
13 checked the boxes as Mr. Ignacio stated, but I just want to put
14 on the record that of course crime of violence, 3142(f)(1)(A)
15 incorporates a definition of crime of violence from 18 U.S.C.
16 3156(a)(4) which includes an offense that has an element of the
17 offense -- as an element of the offense, the threatened use of
18 physical force against the person or property of another. I
19 just wanted to make that clear because, of course, crime of
20 violence itself doesn't -- doesn't really comprehend the full
21 scope of the way it's defined in the statutes.

22 There -- there are a number of reasons that Mr. Kinney
23 should be detained. And Pretrial did a good job, I think,
24 of -- of spelling those out.

25 One, as is so clearly stated here on the record, he

1 does not recognize the authority of this Court or the federal
2 government or federal law. Being released on conditions means
3 abiding by conditions set by this Court in an order pursuant to
4 the laws of the United States. So it's just fundamentally
5 incompatible that he -- that he would be compliant with this
6 Court's conditions and appear as required if -- if what is
7 mandating that are laws and orders and a Court he does not
8 recognize as legitimate or that he's subject to. So we start
9 with that at the get-go.

10 On top of that, he lives in a community that makes
11 its -- and that's their word, I don't know if it's a community.
12 I've never been there. I don't intend to visit. But what I do
13 know is it would be an awfully difficult place for a Pretrial
14 Services officer to visit and check up on Mr. Kinney. And I
15 think it's fair to say that there may be some level of risk in
16 visiting such a community by a Pretrial Services officer.

17 On top of that, we have his alleged crime as described
18 in the complaint. You've got plenty of details about that.
19 And so these are threats to injure. They are not protected by
20 the First Amendment. They are subject to 18 U.S.C. 875(c). It
21 is not the only incidence of threats. And I want to point out
22 that there was, we described in the complaint, there is a -- a
23 personal nexus here, right? Because of his associate who had
24 the run-in with victim number one. This doesn't come out of
25 the blue. And it's not a political statement. It is a threat

1 to injure a specific person -- persons, that is, the harbor
2 master and two people associated with him.

3 On top of that, as the Pretrial Services report
4 indicates, the FBI's actively investigating threats to the two
5 other individuals mentioned in the report and it's a post. I
6 mean there's no question as to what -- that Mr. Kinney made the
7 statements which are threatening in nature. So, that's under
8 investigation.

9 There is yet another victim who's been threatened and
10 that is under investigation. So this is not an isolated
11 incident. And these are serious threats. They're threats to
12 kill. And we take them seriously, that's why we brought the
13 charge. We do not bring a charge like this lightly.

14 We -- we have pointed out to Pretrial Services and
15 it's incorporated into the report that the allegations from
16 2020 -- I can't tell you why Hon. Pros. didn't prosecute, all I
17 can give you is the information I currently have, and I
18 provided that to Pretrial Services. But walking around Kaneohe
19 unlicensed with an assault rifle is unacceptable. It is
20 threatening. And having guns when one is not allowed to.
21 Again, make clear, it was not prosecuted by Hon. Pros. I don't
22 know if that'll change. I have no information either way.

23 He -- Mr. Kinney has made clear to Pretrial Services
24 he's not going to stop smoking marijuana and he will not go to
25 treatment if so ordered by the Court, which is an instance or

1 an example of his unwillingness to do what this Court might
2 order. And of course he is -- he is going back to the woods,
3 which presents the problem I described earlier.

4 We think that all these facts demonstrate by a
5 preponderance that conditions will not ensure that --
6 reasonably ensure that he will appear as required and we also
7 believe that we demonstrated by clear and convincing evidence
8 that he presents a risk of danger that cannot be sufficiently
9 mitigated by conditions or a combination of conditions to -- to
10 specific individuals in the community and the community at
11 large. Thank you, Your Honor.

12 THE DEFENDANT: May I speak, um -- may I speak?

13 THE COURT: All right. Mr. -- Mr. Kinney, I'm going
14 to --

15 THE DEFENDANT: (Indiscernible).

16 THE COURT: -- advise -- I'm going to advise you not
17 to say anything because anything you could say might be used
18 against you.

19 THE DEFENDANT: Not a problem, sir. Not a problem,
20 sir.

21 THE COURT: Okay. But --

22 MR. IGNACIO: Let the judge talk first.

23 THE DEFENDANT: Oh, I'm sorry. I'm sorry.

24 THE COURT: All right.

25 THE DEFENDANT: Go ahead.

1 THE COURT: Now, I'll just tell you right now, you've
2 got one of the most experienced defense counsel sitting to your
3 right, okay? He's telling you don't say anything. Okay. I
4 know it's not easy for you probably in this circumstance
5 because there's a lot of things going on and you probably have
6 some things you want to share.

7 THE DEFENDANT: Yes.

8 THE COURT: But I strongly urge you not to say
9 anything and to instead speak to Mr. Ignacio about these things
10 so you can take the appropriate next step without jeopardizing
11 your rights or your position in this case. Okay?

12 That being said, okay, Mr. Kinney, I'll give you a
13 brief opportunity if you want it, but like I'm saying, I don't
14 think this is a good idea. I strongly urge you not to say
15 anything at this point because there are going to be other
16 proceedings and other opportunities. And before you say
17 anything, you're going to want to know kind of what those
18 ramifications are, okay?

19 THE DEFENDANT: I'm going to be detained the whole
20 time for nothing.

21 MR. IGNACIO: What is it you want to say?

22 THE DEFENDANT: I have a lot of proof --

23 MR. IGNACIO: Shhh, shhh, shhh. Keep your voice
24 (indiscernible).

25 THE DEFENDANT: -- of them --

1 MR. IGNACIO: Okay. Keep your voice (indiscernible).

2 Okay. So what you're saying is --

3 THE DEFENDANT: -- harassing -- harassing us.

4 MR. IGNACIO: Yeah.

5 THE DEFENDANT: Harassing me.

6 MR. IGNACIO: What you're saying is that you think
7 you're not guilty (indiscernible).

8 THE DEFENDANT: I'm -- I'm just answering them back.

9 MR. IGNACIO: Okay. All right.

10 THE DEFENDANT: They the ones -- brah, I got it all
11 written. It's all screenshots, everything, that they want to
12 go head on with the king --

13 MR. IGNACIO: Okay that's enough.

14 THE DEFENDANT: -- to his death. They was saying
15 that.

16 THE COURT: All right. All right. This is probably
17 not the best set of circumstances within which to have a --

18 MR. IGNACIO: Yeah, I think that's enough.

19 THE COURT: -- confidential discussion with counsel.
20 So I'm going to decline to permit Mr. Kinney to -- it's not
21 because I'm trying to be rude to you, Mr. Kinney, it's not
22 because I'm trying to --

23 THE DEFENDANT: Truth will come to light.

24 THE COURT: -- do anything other than ensure that your
25 rights are protected. Okay? Today's proceeding is not about

1 guilt or innocence. That's for another day. Okay? And
2 anything you might have to bear on that, share that with
3 Mr. Ignacio and so that he can best figure out what next steps
4 to take.

5 All right. The Court has carefully considered the
6 merits of the government's motion to detain within the context
7 of the records and files in this case. And for the record the
8 Court has reviewed the criminal complaint in this case as well
9 as the affidavit in support. Beyond that, the Court has
10 carefully considered the information, recommendation of
11 Pretrial Services. That recommendation is -- is to detain.

12 And, Mr. Kinney, just so you know, I -- when I handle
13 these types of matters, I consider all of the information. I
14 don't know you from Adam. Okay? I have nothing against you at
15 all. Okay. But what I have to do is to base a decision based
16 upon the information I have. Okay. And that information might
17 change in the future. I don't know.

18 THE DEFENDANT: I have to --

19 THE COURT: But based upon the information that I have
20 now, I have to determine whether or not I'm comfortable
21 releasing you and knowing that you're going to appear in court,
22 you're not going to pose a danger to anyone. Okay? All right?

23 And so based upon the information that I have, okay,
24 the Court is -- is going to accept the arguments proffered by
25 the government. This is a serious case and the allegations,

1 while unproven, Mr. Kinney will have his day in court as far as
2 guilt or innocence at some point down the line. But the Court
3 has carefully considered the nature of the -- the offense
4 charged, the information contained in the Pretrial Services
5 report with regard to substance abuse history, past criminal
6 history, but to the extent that there are allegations that are
7 uncharged regarding prior crimes involving firearms, this
8 particular case involves multiple complainants and the serious
9 nature of the threats that are alleged give this Court
10 significant concern as to whether or not you can be safely
11 released.

12 I'll also note that I -- I fully respect your right to
13 challenge the jurisdiction of the Court or you feel that you're
14 not subject to the laws of the United States. But in order for
15 me to fundamentally think that someone is appropriate for
16 release into the community on conditions is that they --
17 whether or not they are going to agree to follow those
18 conditions. And here I have some concern about that,
19 Mr. Kinney. I don't make this decision lightly.

20 I'm going to grant the government's motion to detain,
21 okay? And with that you will be detained pending further
22 proceedings in this matter as the Court finds that there is no
23 condition or combination of conditions that can reasonably
24 assure both your presence in court as directed but more
25 importantly, to mitigate any risk of danger that you might pose

1 to any individual in the community.

2 Words matter. Okay. And granted, these are
3 allegations at this point, but when the type of words that are
4 used threatens serious harm or death to other individuals, I --
5 I can't sort of assume that someone is joking. I have to take
6 those words as said for what they're -- what they are intended
7 to mean.

8 And with that, I'll direct you, Mr. Nolan, to please
9 prepare an appropriate order, to include findings that are
10 consistent with the Court's ruling here today. And no more
11 than seven days to my orders box, if you could.

12 With that, we have a preliminary hearing as scheduled,
13 I believe, for next week, Mr. Ignacio.

14 MR. IGNACIO: Thank you, Your Honor. That -- I'm
15 scheduled to start a jury trial in front of Judge Watson on
16 Monday the 25th. It's unlikely that I will be available for
17 the preliminary hearing on the 28th. So I would ask that it be
18 continued possibly by one week.

19 THE COURT: All right. One week. Mr. Nolan, any
20 position on that?

21 MR. NOLAN: No objection, Your Honor.

22 THE COURT: Okay. With that, I will grant the
23 defense's request based strictly on a conflict of schedule.
24 And with that, could I ask the courtroom manager to please
25 select a continued date a week later?

1 THE COURTROOM MANAGER: Yes, Your Honor. Thursday
2 May 5th, 2022, at 10:30 a.m. before Magistrate Judge Porter in
3 Courtroom 5.

4 THE COURT: All right. That'll be your next court
5 appearance, Mr. Kinney. Urge you to continue to speak with
6 Mr. Ignacio about your case. And I believe the next court
7 appearance I probably won't see you, will be another magistrate
8 judge.

9 But with that, anything further by the government?

10 MR. NOLAN: No, Your Honor. Thank you.

11 THE COURT: Mr. --

12 MR. IGNACIO: Just briefly. I did speak with my
13 client about his being physically present in future hearings.
14 And I'm sure he still feels that way right now, but I will
15 attempt to revisit that.

16 THE COURT: All right. So the preliminary hearing at
17 this point, it would be safe to say it might be preferred, at
18 least at this point, to schedule it for an in-person
19 proceeding?

20 MR. IGNACIO: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. IGNACIO: That's my understanding from my client.

23 THE COURT: And that's your right, Mr. Kinney. Not a
24 problem at all. If upon speaking to Mr. Ignacio you change
25 your mind and you prefer to proceed by way of phone or video

1 teleconference --

2 THE DEFENDANT: I'm a man of my word, Your Honor. And
3 all due respect, all due respect, I got to eat trash.

4 THE COURT: All right.

5 THE DEFENDANT: Until this point.

6 THE COURT: All right. With that, court will stand in
7 recess.

8 (The proceedings concluded at 10:57 a.m., April 19, 2022.)

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TRANSCRIBER'S CERTIFICATE

I, CYNTHIA FAZIO, Court-Authorized Transcriber, United States District Court, District of Hawaii, Honolulu, Hawaii, do hereby certify that pursuant to 28 U.S.C. §753 the foregoing is a true, complete and correct transcript from the electronic sound recording of the proceedings had in connection with the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

DATED at Honolulu, Hawaii, May 6, 2022.

/s/ Cynthia Fazio
CYNTHIA FAZIO, RMR, CRR, CRC